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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

USA, )  
)  
Plaintiff, )  
) CRIMINAL ACTION  
v. ) NO. 23cr61 (MN)  
)  
ROBERT HUNTER BIDEN, )  
)  
Defendant. )

Tuesday, October 3, 2023  
10:00 a.m.  
Initial Appearance  
Arraignment

Courtroom 2A  
844 King Street  
Wilmington, Delaware

BEFORE: THE HONORABLE CHRISTOPHER J. BURKE  
United States District Court Magistrate Judge

APPEARANCES:

OFFICE OF THE SPECIAL COUNSEL  
BY: DEREK E. HINES, ESQ.  
BY: LEO WISE, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2 WINSTON & STRAWN LLP

3 BY: ABBE DAVID LOWELL, ESQ.

4 -and-

5 BERGER HARRIS LLP

6 BY: RICHARD I.G. JONES, JR., ESQ.

7 Counsel for the Defendant

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9  
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09:56:30 12

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THE COURT: Please be seated, everyone. Good

10:02:32 14

morning.

10:02:32 15

MR. HINES: Good morning, Your Honor.

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MR. LOWELL: Good morning, Your Honor.

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THE COURT: All right. We have one matter on

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our docket this morning. Let me ask Government's counsel to

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come forward and call our matter for this morning.

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Mr. Hines.

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MR. HINES: Good morning, Your Honor. Derek

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Hines and Leo Wise appearing on behalf of the United States.

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Now is the time the Court has set for initial appearance and

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arraignment on the Indictment filed in the United States

10:02:52 25

versus Robert Hunter Biden, Criminal No. 23-61-MN. The

10:03:01 1 Indictment is Docket No. 4.

10:03:01 2 THE COURT: All right. Thank you, Mr. Hines.

10:03:04 3 You may be seated.

10:03:05 4 Mr. Biden, good morning to you. Mr. Lowell,  
10:03:07 5 good morning to you. Would you introduce your colleague.

10:03:11 6 MR. LOWELL: Yes, Your Honor. Abbe Lowell on  
10:03:14 7 behalf of Mr. Biden. Also, Richard Jones of Wilmington on  
10:03:18 8 behalf of Mr. Biden. And Mr. Biden is present.

10:03:20 9 THE COURT: All right. Thank you.

10:03:21 10 So Mr. Biden, good morning. You're here today  
10:03:21 11 as you know for your initial appearance, or first appearance  
10:03:21 12 in our court on some new charges that have been brought  
10:03:31 13 against you here in this district. So what I want to do in  
10:03:31 14 this initial appearance is a few things.

10:03:31 15 First, I want to review the charges that you  
10:03:41 16 face and the alleged facts relating to them just to make  
10:03:41 17 sure you have a basic understanding of those charges that  
10:03:41 18 have been brought.

10:03:41 19 Next, I'll talk about the maximum penalties that  
10:03:50 20 could apply if you were convicted of one or more of those  
10:03:50 21 charges just to make sure you understand that up front.

10:03:50 22 Then I'll reiterate some important rights that  
10:03:50 23 you have in this matter as it relates to these new charges,  
10:04:00 24 information that you may have heard last time in court, but  
10:04:00 25 that is important and I want to make sure that you

understand.

Next, we'll talk about conditions of pretrial release on these charges. And then as to any other matter coming up, we'll then proceed after the close of the initial appearance to the arraignment which is a short hearing in which for the first time you'll enter your plea to the charges now against you. Okay? All right.

So first, I mentioned that there have been new charges here. And those charges as the parties note were brought in an Indictment returned by a federal grand jury in this district. Mr. Biden, you and your counsel I believe have had a chance already to review the Indictment together. It is a four-page indictment.

I'm not going to read the entirety of it right now, but I do have an obligation to make sure that you understand the charges against you, so I'm going to summarize those charges here. And there are three charges, or three counts in the Indictment, but the Indictment begins with some background relevant to all the charges really.

So first it explains that there was a company, and that is referred to as Company 1, that's located in Wilmington, Delaware. And that company possessed what is known as a Federal Firearms License, meaning that it was known as an FFL and that they're authorized to deal in firearms under federal law.

10:05:33 1                   The Indictment says that FFL holders are  
10:05:36 2                   licensed, among other things, to sell firearms and  
10:05:39 3                   ammunition and that they're obligated to follow various  
10:05:41 4                   rules and regulations that are set out in the United States  
10:05:46 5                   Code.

10:05:48 6                   It next explains that among the rules and  
10:05:51 7                   regulations that those FFL's need to follow are ones  
10:05:56 8                   requiring that anybody seeking to purchase a firearm has to  
10:06:01 9                   fill out what is called a Firearm Transaction Record, known  
10:06:05 10                  as ATF Form 4473. And it explains that part of Form 4473  
10:06:11 11                  requires that the prospective purchaser of a firearm has to  
10:06:15 12                  certified that his or her answers on that form are true and  
10:06:18 13                  correct.

10:06:18 14                  It then explains that question 11(e) on the form  
10:06:23 15                  requires that the prospective purchaser of the firearm  
10:06:27 16                  certify truthfully that he or she is not an unlawful user of  
10:06:31 17                  or addicted to any narcotic drugs or other controlled  
10:06:34 18                  substance.

10:06:37 19                  It explains that in the certification section of  
10:06:40 20                  the form the buyer has to certify that his or her answers  
10:06:44 21                  are true, correct, and complete. It explains that the buyer  
10:06:48 22                  has to acknowledge this by signing the form and associated  
10:06:52 23                  with this signature is a statement that says, I understand  
10:06:56 24                  the person who answers yes to the questions, including  
10:07:00 25                  question 11(e), is prohibited from purchasing or receiving a

firearm, and that making any false oral or written statements is a crime punishable as a felony under federal law and may also violate state or local law.

And lastly, the introduction section notes that FFL holders are required by law to maintain certain records, including the form, the completed Form 4473 of the identity of any actual buyer of firearms sold by the FFL holder, including the buyer's home address and date of birth.

And then it proceeds to the three counts. The first count is the charge of making a false statement in purchase of a firearm. It's an alleged violation of Title 18 of the United States Code, Sections 922(a)(6) and 924(a)(2). And there it's alleged that in addition to the allegations that I have just described, that on or about October 12th of 2018, in this district, the District of Delaware, that you, in connection with a purchase or acquisition of a firearm, and here specifically a Colt Cobra 38 SPL revolver with the serial number listed in Count 1 that you purchased from Company 1, and that Company 1 being at the time licensed under federal law as an FFL, it's alleged that you in association with that purchase knowingly made a false and fictitious written statement that was intended and likely to deceive the firearms dealer with respect to the fact that it was material to the lawfulness of the sale of that firearm under the provisions of federal

10:08:41 1 law.

10:08:41 2 More specifically that you did so by making a  
10:08:44 3 written statement on the Form 4473 that you filled out  
10:08:47 4 certifying that you were not an unlawful user of or addicted  
10:08:51 5 to any stimulant, narcotic drug, or other controlled  
10:08:54 6 substance when, in fact, it's alleged that you knew that  
10:08:57 7 statement was false and fictitious.

10:09:00 8 Second in Count 2, you're charged there with a  
10:09:02 9 similar, although slightly different crime, called making a  
10:09:04 10 false statement related to information required to be kept  
10:09:10 11 by a federal firearms licensed dealer. That's an alleged  
10:09:14 12 violation of a different statute, Title 18 of the United  
10:09:17 13 States Code, Section 924(a) (1) (A) .

10:09:20 14 There it's alleged that on or about October 12th  
10:09:24 15 of 2018, in the District of Delaware, you in connection with  
10:09:27 16 the acquisition of that firearm that I described listed in  
10:09:30 17 Count 1 knowingly made a false statement and representation  
10:09:33 18 to Company 1 with respect that information required by the  
10:09:36 19 provisions of federal law to be kept in that FFL holder's  
10:09:40 20 records. Again, the statement being that you certified on  
10:09:42 21 Form 4473 that you were not an unlawful user of or addicted  
10:09:44 22 to any stimulant or narcotic drug or other controlled  
10:09:48 23 substance when, in fact, it's alleged that you knew that  
10:09:50 24 statement to be false and fictitious.

10:09:52 25 Lastly, in Count 3, that's the charge of

possession of a firearm by a person who is an unlawful user or addicted to a controlled substance. That's violation of Title 18 of the United States Code, Sections 922(g)(3) and 924(a)(2). There it's alleged that again, on or about October 12th, 2018, through on or about October 23rd, 2018, in the District of Delaware, that you knowing that you were an unlawful user of or addicted to a stimulant, narcotic drug, or any other controlled substance as defined in Title 21 of the U.S. Code, Section 802, that you did knowingly possess a firearm, that is the firearm described earlier, the Colt Cobra 38 SPL revolver with the serial number listed in the count, and that said firearm had been shipped and transported in interstate commerce prior to your possession of the gun.

All right. So again, three counts, the last of which relates to the possession of the firearm, the first two relates to statements made relating to its purchase.

I want you to know that in reviewing this information, nothing I say here today is meant to suggest that you're either innocent or guilty of these charges, it's simply to make sure that you have a basic factual understanding of what you have been charged with.

Do you have that basic understanding?

THE DEFENDANT: Yes, Your Honor.

MR. LOWELL: Your Honor, you should also note



10:11:20 1 for the record that we have gone over this with him, and I  
10:11:23 2 should have said at the beginning that we waive the reading  
10:11:26 3 of the indictment. It's a short indictment and Mr. Biden  
10:11:28 4 and I have gone over it in some detail.

10:11:31 5 THE COURT: Okay. That will relate to your  
10:11:34 6 arraignment that will happen very shortly. Thank you.

10:11:37 7 Next, Mr. Biden, I want to review the maximum  
10:11:40 8 penalties that could apply if you are convicted to one or  
10:11:42 9 more of these charges. The government has provided that  
10:11:43 10 information to the Court.

10:11:43 11 So first with regard to Count 1, and keep in  
10:11:46 12 mind these are the maximum penalties that could apply, you  
10:11:49 13 could not be sentenced to anything more than this by the  
10:11:52 14 district judge if you were convicted. You, in fact, could  
10:11:55 15 receive lesser than these sentences.

10:11:57 16 With regard to Count 1, the maximum penalty that  
10:12:00 17 applies is a maximum term of imprisonment of ten years; a  
10:12:03 18 maximum fine of \$250,000; a maximum term of three years of  
10:12:07 19 supervised release, supervised release being a period of  
10:12:10 20 years after someone is released from prison where they still  
10:12:13 21 have to follow certain conditions that were set by the judge  
10:12:16 22 at their sentencing; and the payment of \$100 special  
10:12:19 23 assessment.

10:12:22 24 In Count 2, the maximum penalties are a maximum  
10:12:25 25 term of imprisonment of five years; a maximum fine of

10:12:26 1 \$250,000; a maximum term of three years of supervised  
10:12:29 2 release; and again, a special assessment of \$100.

10:12:32 3 And then lastly in Count 3, the maximum  
10:12:35 4 penalties are the same as it relates to Count 1, a maximum  
10:12:38 5 term of ten years of imprisonment; a maximum fine of  
10:12:41 6 \$250,000; a maximum term of three years of supervised  
10:12:45 7 release; and a \$100 special assessment.

10:12:47 8 Mr. Biden, do you understand what I said about  
10:12:50 9 the maximum penalties that could apply in your case?

10:12:52 10 THE DEFENDANT: Yes, Your Honor.

10:12:54 11 THE COURT: Next let me talk about and reiterate  
10:12:57 12 some of the important rights that you have in this case now  
10:12:59 13 that you have been charged in this Indictment just as you  
10:13:02 14 did previously when you were here in court in July, and that  
10:13:05 15 is, of course, first, that you have the right to remain  
10:13:08 16 silent, which means you don't have to talk to anybody about  
10:13:11 17 these charges or the facts relating to them and no one can  
10:13:14 18 force you to do so. On the other hand, you need to know  
10:13:17 19 that if you do choose to talk about the facts relating to  
10:13:20 20 these allegations, that the words that you say in those  
10:13:23 21 conversations can be used against you, including in court in  
10:13:26 22 this very case.

10:13:29 23 On the other hand, anything you say to your  
10:13:32 24 lawyers for the purposes of getting legal advice, those  
10:13:35 25 conversations are privileged and confidential, which means

they can't be used against you for any reason.

So a lot of times people say that the only truly safe person to talk to about the charges that you face if you want to make absolutely sure that your words aren't used against you is your attorneys.

Do you understand what I said about your right to remain silent?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. I mentioned attorneys. Of course that's another right that you have. As you know, as the Court described previously, you have the right to hire attorneys of your own choosing to represent you. If you could not do so financially, you could ask the Court to appoint an attorney to represent you. In this case I understand that you have chosen Mr. Lowell and Mr. Jones as your lawyers to represent you in this case. Is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you wish to continue that representation as well; is that right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And I notice for the record that counsel's appearances are on the docket. There is nothing further they need to do to establish that.

So next let me talk about the conditions of

10:14:30 1 release that I intend to impose here, but also ask the  
10:14:35 2 parties for any input that they have. And as counsel knows,  
10:14:39 3 Judge Noreika at the prior hearing had imposed conditions of  
10:14:43 4 pretrial release on Mr. Biden. I have discussed with our  
10:14:50 5 liaison probation officer, our chief probation officer,  
10:14:54 6 Ms. Bray, the conditions that should apply going forward.  
10:14:57 7 Ms. Bray I know has been in touch regularly with the  
10:15:01 8 supervising probation officer in the Central District of  
10:15:04 9 California.

10:15:06 10 It is the Probation Officer's recommendation  
10:15:07 11 that the Court impose essentially similar conditions, the  
10:15:10 12 same conditions, there are some slight wording changes to  
10:15:13 13 note where we are in the case, but basically the same  
10:15:15 14 conditions that were imposed previously on Mr. Biden.

10:15:18 15 What I'm going to do now is to review the  
10:15:20 16 conditions that have been suggested and that are mirrored by  
10:15:21 17 the prior conditions of release. I'll give counsel for each  
10:15:24 18 side a chance to tell me whether they have any suggested  
10:15:28 19 alterations or edits to those conditions, and then  
10:15:31 20 ultimately I'll impose conditions and make a brief record  
10:15:32 21 explaining why they're appropriate.

10:15:34 22 With that said, the conditions that are  
10:15:42 23 suggested to be imposed here are first, that the Defendant  
10:15:44 24 must submit to supervision by and report for supervision to  
10:15:48 25 the U.S. Probation Office in the Central District of

California where he lives. And then he must submit to supervision, because he's currently supervised, no later than as currently directed by his current officer.

Next, that he must continue or actively seek employment.

Next, he must abide by the following restrictions of personal association, residence or travel, and that is that he must communicate in writing all international travel plans and provide supporting documentation if requested to both the Probation Office in the District of Delaware and the Probation Office in the Central District of California.

Next that he not possess a firearm, destructive device, or other weapon.

Next, that he not use alcohol at all.

Next, that he not use or unlawfully possess a narcotic drug or other controlled substance as defined in Title 21 U.S. Code, Section 802, unless prescribed by a licensed medical practitioner.

Next, that he submit to testing for a prohibited substance if required by the Pretrial Services Office or the supervising probation officer. I will note that testing may be used with random frequency and describe the type of testing provided and notes that the Defendant must not obstruct or attempt to obstruct or tamper with the

10:17:02 1 efficiency or accuracy of the testing process.

10:17:05 2 And lastly, that the Defendant participate in a  
10:17:08 3 program of inpatient or outpatient substance abuse therapy  
10:17:12 4 and counseling if directed by the Pretrial Services Office  
10:17:15 5 or the supervising probation officer.

10:17:17 6 All right. Mr. Hines, on behalf of the  
10:17:22 7 Government, does the Government have any suggestions,  
10:17:23 8 alterations or edits to the proposed conditions of release?

10:17:26 9 MR. HINES: We do not, Your Honor. Thank you.

10:17:28 10 THE COURT: Thank you.

10:17:28 11 Mr. Lowell, any edits or alterations on behalf  
10:17:31 12 of your client?

10:17:31 13 MR. LOWELL: Not at this time.

10:17:35 14 THE COURT: In light of that and in light of the  
10:17:36 15 fact of the Court's discussions with our probation office, I  
10:17:40 16 find that these conditions would be appropriate to institute  
10:17:41 17 in this case going forward. Just a few reasons briefly.

10:17:47 18 The first is conditions are relevant and related  
10:17:50 19 to the charges faced on the record herein. I just note in  
10:17:52 20 that regard certainly that conditions relating to the not  
10:18:00 21 possessing or using drugs or alcohol are relevant and  
10:18:05 22 supported by information in the Pretrial Services report  
10:18:08 23 relating to Mr. Biden's past history of addiction.

10:18:11 24 The conditions indicating that the Defendant  
10:18:12 25 should not possess a firearm are obviously relevant to the

charges. And the supervision that has been suggested makes sense in light of those facts, including the requirement that if the Defendant travels, he must communicate in advance in writing of his travel plans to Probation Office.

I also note that I am informed by the Probation Office that since his prior appearance here in July of 2023, Mr. Biden has been communicative with and fully responsive to the supervising probation officer in the Central District of California; that he has been tested for drugs and alcohol a number of times and has tested negative, and so for all those reasons I find that these conditions of release are appropriate.

So I'm going to go ahead and sign the conditions of release form. I'll hand a copy down to my courtroom deputy. After our hearing is closed, he will come down briefly and review those with Mr. Biden and get his signature on the form and we'll get that to counsel thereafter. So those conditions of release will be imposed here.

Counsel, I know that at the prior appearance on the proposed felony indictment, Judge Noreika reviewed the Government's *Brady* obligations with them. I'll simply say that those obligations continue to be in force.

All right. Before we conclude the initial appearance portion of this hearing, let me just ask if there

10:19:46 1 is anything further I didn't address. The Government,  
10:19:50 2 Mr. Hines?

10:19:50 3 MR. HINES: No, Your Honor. Thank you.

10:19:51 4 THE COURT: Mr. Lowell?

10:19:52 5 MR. LOWELL: No, Judge.

10:19:53 6 THE COURT: Thank you.

10:19:55 7 Next let's move on to the arraignment. Again,  
10:19:58 8 Mr. Biden, this is just a short portion of the hearing where  
10:20:01 9 you'll answer your plea to the charges against you.

10:20:05 10 And Mr. Lowell, in that regard, I know that you  
10:20:08 11 have stated that Mr. Biden waives any full reading of the  
10:20:11 12 Indictment. How does he wish to plead to the three charges  
10:20:13 13 against him in the Indictment?

10:20:14 14 MR. LOWELL: Mr. Biden pleads not guilty to the  
10:20:17 15 three counts that have been brought against him.

10:20:19 16 THE COURT: In light of that, I'll ask my  
10:20:21 17 courtroom deputy, Mr. Kincaid, to come down, we have a copy  
10:20:25 18 of the charging document for Mr. Biden and his counsel to  
10:20:28 19 sign indicating formally his not guilty plea to these  
10:20:32 20 charges.

10:21:00 21 COURTROOM DEPUTY: The plea has been entered.

10:21:02 22 THE COURT: Thank you.

10:21:02 23 Counsel, as you know, the case is assigned to  
10:21:11 24 Judge Noreika. I will, as I always do with regards to  
10:21:15 25 arraignments, I'll set an initial pretrial motion deadline



10:21:19 1 for thirty days from today's date, that is November 3rd of  
10:21:23 2 2023. I'll sign that order.

10:21:25 3 We'll just note that to the extent that counsel  
10:21:28 4 for either side or counsel jointly wishes to move to extend  
10:21:31 5 that motions deadline or otherwise propose some different  
10:21:35 6 pretrial schedule that they do so by way of a written motion  
10:21:39 7 to Judge Noreika and file it on the docket. So I'm signing  
10:21:42 8 that order.

10:21:42 9 Mr. Biden, there is not a further hearing for me  
10:21:46 10 to set in your case at this time. The next significant  
10:21:50 11 deadline is that motions deadline that I just set. I'm sure  
10:21:53 12 you'll talk with your counsel between now and then as to how  
10:21:56 13 the case may proceed going forward.

10:21:58 14 Mr. Hines, one question on my end. The  
10:22:02 15 Indictment now obviously has been filed on the docket and  
10:22:05 16 that still has the prior felony information that was filed  
10:22:09 17 with regard to the prior gun charge back at the point where  
10:22:14 18 it was thought that there might be a plea. Did the  
10:22:17 19 Government intend to dismiss that charge?

10:22:19 20 MR. HINES: Yes, consistent with local practice,  
10:22:22 21 we intend to file a written motion within the next day.

10:22:23 22 THE COURT: Okay. And that will go to Judge  
10:22:26 23 Noreika and she will review that.

10:22:28 24 All right. Is there anything further that the  
10:22:31 25 Government would need to address at this hearing before we

10:22:32 1 recess?

10:22:32 2 MR. HINES: No, Your Honor.

10:22:33 3 THE COURT: All right. Mr. Lowell, anything  
10:22:35 4 further on behalf of Mr. Biden?

10:22:36 5 MR. LOWELL: Yes, a couple of things, Judge.

10:22:38 6 First, I understand that Judge Noreika did  
10:22:41 7 advise the Government of their Brady obligations. I would  
10:22:44 8 want to talk to the Government about the overall discovery  
10:22:47 9 issues, especially with the thirty-day motions schedule. We  
10:22:50 10 would like to get discovery in the case obviously before we  
10:22:53 11 file the motions. We will talk to them. I don't know that  
10:22:56 12 we'll have any problems that we will need to bring for the  
10:22:58 13 Court's attention, but we will see.

10:22:59 14 And second of all on those motions, I appreciate  
10:23:02 15 the date, I think we can conform to that based on the  
10:23:04 16 discovery perhaps, but I think there will be a number of  
10:23:07 17 motions which won't be a surprise to Your Honor or to Judge  
10:23:10 18 Noreika, including motions to dismiss which we discussed  
10:23:13 19 during the last proceeding which would focus on our view  
10:23:16 20 that there was an agreement in effect which would prevent  
10:23:19 21 this charge from being filed as well as questioning the  
10:23:22 22 constitutionality of the statutes that have been cited and  
10:23:25 23 others depending on what happens. So that thirty days seems  
10:23:28 24 right, but we'll talk to the Government.

10:23:30 25 THE COURT: I appreciate that. And I would

10:23:32 1 suggest that counsel talk to each other to the extent that  
10:23:35 2 counsel has jointly proposed alterations to the motions  
10:23:40 3 deadline, I'm sure Judge Noreika, not speaking for her,  
10:23:43 4 she'll determine the schedule that she thinks is  
10:23:46 5 appropriate. But it would be helpful if the parties do have  
10:23:50 6 some joint proposal as to how things should go, other than  
10:23:53 7 the motions deadline set thirty days from today's date, that  
10:23:57 8 they provide that to the Court at the earliest convenience.

10:24:00 9 MR. LOWELL: The only other thing that would  
10:24:01 10 maybe not change the schedule but would add to the schedule,  
10:24:05 11 is that at least one of those motions, I think given what we  
10:24:07 12 all know about this case, we will be making a request for an  
10:24:10 13 evidentiary hearing.

10:24:11 14 THE COURT: Thank you. All right. With that  
10:24:13 15 said and without anything further to address here, I'll  
10:24:17 16 thank counsel for those arguments.

10:24:21 17 As we said, the initial pretrial motions  
10:24:25 18 deadline will be set for November 3rd. And with that, the  
10:24:29 19 Court will stand in recess. Thank you.

10:24:31 20 COURTROOM DEPUTY: All rise.

21 (Court adjourned at 10:24 a.m.)

22 I hereby certify the foregoing is a true and  
23 accurate transcript from my stenographic notes in the proceeding.

24 /s/ Dale C. Hawkins  
25 Official Court Reporter  
U.S. District Court